

ORDINANCE 122407

AN ORDINANCE relating to land use code enforcement, amending Sections 23.90.006, 23.90.008, 23.90.014, 23.90.018, 23.90.019; 23.90.020, 23.91.006, and 23.91.012, adding new Sections 23.90.015 and 23.90.025, and repealing Section 23.90.022 of the Seattle Municipal Code.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 23.90.006 of the Seattle Municipal Code, which section was last amended by Ordinance 121196, is amended as follows:

23.90.006 Investigation and notice of violation.

A. The Director ~~((shall))~~ is authorized to investigate any structure or use ~~((which))~~ the Director reasonably believes does not comply with the standards and requirements of this Land Use Code.

B. If after investigation the Director determines that the standards or requirements have been violated, the Director ~~((shall serve))~~ may issue a notice of violation to ~~((upon))~~ the owner, tenant or other person responsible for the condition. The notice of violation shall state separately each standard or requirement violated, shall state what corrective action, if any, is necessary to comply with the standards or requirements~~((;))~~, and shall set a reasonable time for compliance. ~~((The notice shall state that any subsequent violation may result in criminal prosecution as provided in Section 23.90.020.))~~ In the event of violations of the standards or requirements of the Seattle Shoreline Master Program, Chapter 23.60, the required corrective action shall include, if appropriate, but shall not be limited to, mitigating measures such as restoration of the area. ~~((Civil penalties for unauthorized dwelling units in single family structures shall be applied.))~~



1 C. The notice shall be served upon the owner, tenant or other person responsible for the
2 condition by personal service (~~(, registered mail, or certified mail)~~) or by first class mail ((with
3 return receipt requested, addressed to the last known address of such person)) to the person's last
4 known address. (~~((If, after a reasonable search and reasonable efforts are made to obtain service,~~
5 ~~the whereabouts of the person or persons is unknown or service cannot be accomplished and the~~
6 ~~Director makes an affidavit to that effect, then service of the notice upon such person or persons~~
7 ~~may be made by:))~~ If the address of the responsible person is unknown and cannot be found after
8 a reasonable search, the notice may be served by posting a copy of the notice at a conspicuous
9 place on the property. If a notice of violation is directed to a tenant or other person responsible
10 for the violation who is not the owner, a copy of the notice shall be sent to the owner of the
11 property.

14 ((~~1. Publishing the notice once each week for two (2) consecutive weeks in the~~
15 ~~City Official Newspaper; and~~

16 2. ~~Mailing a copy of the notice to each person named on the notice of violation by~~
17 ~~first class mail to the last known address if known, or if unknown, to the address of the property~~
18 ~~involved in the proceedings.))~~

20 D. A copy of the notice of violation may be filed with the King County Department of
21 Records and Elections when the responsible party fails to correct the violation or the Director
22 requests the City Attorney take appropriate enforcement action (~~((may be posted at a conspicuous~~
23 ~~place on the property, unless posting the notice is not physically possible)).~~

25 E. Nothing in this section shall be deemed to limit or preclude any action or proceeding to
26 enforce this chapter nor does anything in this section obligate the Director to issue a notice of

1 violation prior to initiation of a civil or criminal enforcement action except as otherwise provided
2 in Director's rules adopted pursuant to SMC chapter 23.88. ~~((Nothing in this section shall be~~
3 ~~deemed to limit or preclude any action or proceeding pursuant to Section 23.90.010 or Section~~
4 ~~23.90.012.~~

5 ~~F. The Director may mail, or cause to be delivered to all residential, nonresidential,~~
6 ~~and/or live work rental units in the structure or post at a conspicuous place on the property, a~~
7 ~~notice that informs each recipient or resident about the notice of violation, Stop Work order or~~
8 ~~emergency Order and the applicable requirements and procedures.~~

9 ~~G. A notice or an Order may be amended at any time in order to:~~

- 10
11 ~~1. Correct clerical errors, or~~
12
13 ~~2. Cite additional authority for a stated violation.))~~

14 Section 2. Section 23.90.008 of the Seattle Municipal Code, which section was last
15 amended by Ordinance 117263, is amended to read as follows:

16 **23.90.008 Time to comply.**

17
18 ~~((A-))~~ When calculating a reasonable time for compliance as required by Section
19 23.90.006, the Director shall consider the following criteria:

- 20 1. The type and degree of violation cited in the notice;
21
22 2. The stated intent, if any, of a responsible party to take steps to comply;
23
24 3. The procedural requirements for obtaining a permit to carry out corrective
25 action;
26
27 4. The complexity of the corrective action, including seasonal considerations,
28 construction requirements and the legal prerogatives of landlords and tenants; and

5. Any other circumstances beyond the control of the responsible party.

~~((B. Unless a request for review before the Director is made in accordance with Section 23.90.014 the notice of violation shall become the final order of the Director. After the notice of violation becomes the final order of the Director, a copy of the notice of violation shall be filed with the King County Department of Records and Elections if the notice of violation cites illegal uses, illegal units, failure to comply with a permit condition, elimination of a required parking space, more than one (1) dwelling per lot, or shoreline violations. All other notices of violation shall be filed with the King County Department of Records and Elections when the Director notifies the City Attorney in writing of any person subject to a penalty under the title.))~~

Section 3. Section 23.90.014 of the Seattle Municipal Code, which section was last amended by Ordinance 119702, is amended as follows:

23.90.014 Review by the Director.

A. Any person significantly affected by or interested in a notice of violation issued by the Director pursuant to Section 23.90.006 may obtain a review of the notice by requesting such review within ten (10) ~~((fifteen (15)))~~ days after service of the notice. When the last day of the period so computed is a Saturday, Sunday or federal or City holiday, the period shall run until five (5:00) p.m. on the next business day. The request shall be in writing, and upon receipt of the request, the Director shall notify any persons served the notice of violation and the complainant, if any, of the request for review and the deadline for submitting additional information for the review. ~~((,which shall be within))~~ Additional information shall be submitted to the Director no later than fifteen (15) ~~((twenty (20)))~~ days after the notice of a request for a review is mailed ~~((received))~~, unless otherwise agreed by all persons served with the notice of violation. Before



1 the deadline for submission of additional information, any person significantly affected by or
2 interested in the notice of violation (including any persons served the notice of violation and the
3 complainant) may submit any additional information in the form of written material or oral
4 comments to the Director for consideration as part of the review.

5 B. The review will be made by a representative of the Director who is familiar with the
6 case and the applicable ordinances. The Director's representative will review all additional
7 information received by the deadline for submission of additional information. The reviewer may
8 also request clarification of information received and a site visit. After review of the additional
9 information, the Director may:
10

- 11 1. Sustain the notice of violation;
- 12 2. Withdraw the notice of violation;
- 13 3. Continue the review to a date certain for receipt of additional information; or
- 14 4. Modify the notice of violation, which may include an extension of the
15 compliance date.
16

17 ~~((C. The Director shall issue an Order of the Director containing the decision within
18 seven (7) days of the date of the completion of the review and shall cause the same to be mailed
19 by regular first class mail to the person or persons named on the notice of violation, mailed to the
20 complainant, if possible, and filed with the Department of Records and Elections of King
21 County)).~~
22

23 Section 4. A new section 23.90.015 is added to the Seattle Municipal Code as follows:
24

25 **23.90.015 Order of the Director.**
26
27
28

1 A. Where review by the Director has been conducted pursuant to Section 23.90.014, the
2 Director shall issue an order of the Director containing the decision within fifteen (15) days of
3 the date that the review is completed and shall cause the same to be mailed by regular first class
4 mail to the person or persons named on the notice of violation and, if possible, mailed to the
5 complainant.
6

7 B. Unless a request for review before the Director is made pursuant to Section 23.90.014,
8 the notice of violation shall become the order of the Director.

9 C. Because civil actions to enforce Title 23 SMC are brought in Seattle Municipal Court
10 pursuant to Section 23.90.018, orders of the Director issued under this chapter are not subject to
11 judicial review pursuant to chapter 36.70C RCW.
12

13 Section 5. Section 23.90.018 of the Seattle Municipal Code, which section was last
14 amended by Ordinance 122190, is amended as follows:

15 **23.90.018 Civil ~~((penalty))~~ enforcement proceedings and penalties.**
16

17 A. In addition to any other ~~((sanction or remedial procedure that may be available))~~
18 remedy authorized by law or equity, any person violating or failing to comply with any of the
19 provisions of Title 23 ~~((and who is identified in an order of the Director))~~ shall be subject to a
20 cumulative penalty ~~((in the amount))~~ of ~~((Seventy five (\$75)))~~ up to One Hundred Fifty Dollars
21 (\$150.00) per day for each violation from the date the violation begins for the first ten (10) days
22 of noncompliance; and up to Five Hundred Dollars (\$500) per day for each violation ((from the
23 date set for compliance)) for each day beyond ten (10) days of noncompliance until compliance is
24 achieved ~~((the person complies with the requirements of the code))~~, except as provided in
25 subsection B of this section. In cases where the Director has issued a notice of violation, the
26
27
28

1 violation will be deemed to begin for purposes of determining the number of days of violation on
2 the date compliance is required by the notice of violation.

3 B. Specific Violations.

4 1. Violations of Section 23.71.018 are subject to the penalty in the amount
5 specified in Section 23.71.018 H.
6

7 2. Violations of ~~((the requirements of))~~ Section 23.44.041 C are subject to a civil
8 penalty of Five Thousand Dollars (\$5,000), which shall be in addition to any penalty imposed
9 under subsection A of this section.

10 3. Violation of Section 23.49.011 or 23.49.015 with respect to failure to
11 demonstrate compliance with commitments to earn LEED Silver ratings under either such
12 Section are subject to penalty in amounts determined under Section 23.49.020, and not to any
13 other penalty.
14

15 C. Civil actions to enforce Title 23 shall be brought exclusively in Seattle Municipal
16 Court except as otherwise required by law or court rule. ~~((The penalty imposed by this section~~
17 ~~shall be collected by civil action, brought in the name of the City)).~~ The Director shall ~~((notify))~~
18 request in writing that the City Attorney take enforcement action. ~~((in writing of the name of any~~
19 ~~person subject to the penalty, and the))~~ The City Attorney shall, with the assistance of the
20 Director, take appropriate action to ~~((collect the penalty))~~ enforce Title 23. In any civil action
21 ~~((for a penalty))~~ filed pursuant to this chapter, the City has the burden of proving by a
22 preponderance of the evidence that a violation exists or existed. ~~((the))~~ The issuance of the
23 notice of violation or of an order following a review by the Director is not itself evidence that a
24 violation exists.
25
26
27
28

1 D. Except in cases of violations of Section 23.49.011 or 23.49.015 with respect to failure
2 to demonstrate compliance with commitments to earn LEED Silver ratings, the violator may
3 show as full or partial mitigation of liability:

4 1. That the violation giving rise to the action was caused by the ~~((wilful))~~ willful
5 act, or neglect, or abuse of another; or
6

7 2. That correction of the violation was commenced promptly ~~((upon receipt of the~~
8 ~~notice thereof))~~, but that full compliance within the time specified was prevented by inability to
9 obtain necessary materials or labor, inability to gain access to the subject structure, or other
10 condition or circumstance beyond the control of the defendant.
11

12 Section 6. Subsection B of Section 23.90.019 of the Seattle Municipal Code, which
13 section was last amended by Ordinance 122190, is amended as follows:

14 **23.90.019 Civil penalty for unauthorized dwelling units in single-family structures.**

15 * * *

16 B. After discovery of the existence of one (1) or more unauthorized dwelling unit(s) in a
17 single-family dwelling unit or the existence of an unauthorized detached dwelling unit in a
18 detached accessory ~~((dwelling-unit))~~ structure, the Director ~~((shall))~~ may issue a ~~((Notice of~~
19 ~~Violation))~~ notice of violation in the manner set forth in Section 23.90.006, which notice shall
20 impose the civil penalty and notify the owner of the date by which action to remove or legally
21 establish the unauthorized unit(s) must be completed to avoid additional penalty. Failure to
22 complete the required action by the date stated shall be a further violation of ~~((the Land Use~~
23 ~~Code))~~ Title 23, subjecting the owner to an additional penalty of ~~((Seventy-five Dollars (\$75)))~~
24 up to Five Hundred Dollars (\$500) per day for each violation from the date the violation begins
25
26
27
28

1 until ~~((the Notice))~~ compliance is ~~((satisfied))~~ achieved. In cases where the Director has issued a
2 notice of violation, the violation will be deemed to begin for purposes of determining the number
3 of days of violation on the date compliance is required by the notice of violation. Such penalties
4 shall be collected in the manner provided in Section 23.90.018.

5 Section 7. Subsection A of Section 23.90.020 of the Seattle Municipal Code, which
6 section was last amended by Ordinance 122054, is amended as follows:
7

8 **23.90.020. Alternative ~~((Criminal penalties))~~ criminal penalty.**

9 A. Any person ~~((violating))~~ who violates or ~~((failing))~~ fails to comply with any of the
10 provisions of this Title 23 and who has had an Order of Judgment entered against them by a court
11 of competent jurisdiction for violating Titles 22 or 23 within the past seven (7) years from the
12 date the criminal charge is filed ~~((Land Use Code and who has had a judgment entered against~~
13 ~~him or her pursuant to Section 23.90.018 or its predecessors within the past five (5) years shall~~
14 ~~be subject to criminal prosecution and upon conviction of a subsequent violation shall be fined in~~
15 ~~a sum not exceeding Five Thousand Dollars (\$5,000) or be imprisoned in the City Jail for a term~~
16 ~~not exceeding one (1) year or be both fined and imprisoned))~~ shall upon conviction be guilty of a
17 gross misdemeanor subject to the provisions of Chapter 12A.02 and 12A.04, except that absolute
18 liability shall be imposed for such a violation or failure to comply and none of the mental states
19 described in Section 12A.04.030 need be proved. The Director may request that the City
20 Attorney prosecute such violations criminally as an alternative to the civil procedure outlined in
21 this chapter. Each day of noncompliance with any of the provisions of this Land Use Code shall
22 constitute a separate offense.
23
24
25

26 * * *



Section 8. A new section 23.90.025 is added to the Seattle Municipal Code as follows:

23.90.025 Appeal to Superior Court.

Final decisions of the Seattle Municipal Court on enforcement actions authorized by this chapter may be appealed pursuant to the Rules for Appeal of Decisions of Courts of Limited Jurisdiction.

Section 9. Subsection B of Section 23.91.006 of the Seattle Municipal Code, which was last amended by Ordinance 119896, is hereby amended as follows:

SMC 23.91.006 Response to citations.

* * *

B. A response to a citation must be received by the Office of the Hearing Examiner no later than ~~((eighteen (18)))~~ fifteen (15) days after the date the citation is served. When the last day of the appeal period so computed is a Saturday, Sunday, or federal or City holiday, the period shall run until five (5:00) p.m. on the next business day.

Section 10. Subsection E of Section 23.91.012 of the Seattle Municipal Code, which section was last amended by Ordinance 121477, is hereby amended as follows:

SMC 23.91.012 Contested hearing.

* * *

E. Evidence at Hearing.

1. The certified statement or declaration authorized by RCW 9A.72.085 submitted by an inspector shall be prima facie evidence that a violation occurred and that the person cited is responsible. The certified statement or declaration of the inspector authorized under RCW

1 9A.72.085 and any other evidence accompanying the report shall be admissible without further
2 evidentiary foundation.


3 2. Any certifications or declarations authorized under RCW 9A.72.085 shall also be
4 admissible without further evidentiary foundation. The person cited may rebut the DPD evidence
5 and establish that the cited violation(s) did not occur or that the person contesting the citation is
6 not responsible for the violation.
7

8 Section 11. Section 23.90.022 of the Seattle Municipal Code, which was last amended by
9 Ordinance 120156, is repealed in its entirety.


10 Section 12. Severability and Savings. If any section, sentence, clause or phrase of this
11 ordinance shall be held to be invalid or unconstitutional by an administrative agency or quasi-
12 judicial body, or by a court of competent jurisdiction, such invalidity or unconstitutionality shall
13 not affect the validity or constitutionality of any other section, sentence, clause or phrase of this
14 ordinance. Provided, however, that if any section, sentence, clause or phrase of this ordinance is
15 held to be invalid by an administrative agency or quasi-judicial body, or by a court of competent
16 jurisdiction, then the section, sentence, clause or phrase in effect prior to the effective date of this
17 ordinance shall be in full force and effect for that individual section, sentence, clause or phrase as
18 if this ordinance had never been adopted.
19
20

21 Section 13. This ordinance shall take effect and be in force thirty (30) days from and
22 after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10)
23 days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020
24
25
26
27
28

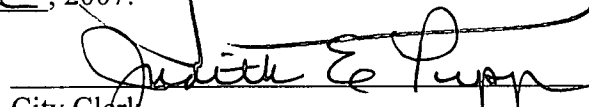
1
2
3 Passed by the City Council the 29th day of MAY, 2007, and signed by me in open
4 session in authentication of its passage this 29th day of MAY, 2007.

5
6 
7 President _____ of the City Council

8 Approved by me this 5th day of June, 2007.

9
10 
11 Gregory J. Nickels, Mayor

12 Filed by me this 6 day of June, 2007.

13
14 
15 City Clerk

16
17
18
19
20
21
22
23
24
25
26
27
28 (Seal)

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Department of Planning and Development	Darby DuComb, 684-3781	Amanda Allen, 684-8894

Legislation Title: An ordinance relating to land use code enforcement, amending Sections 23.90.006, 23.90.008, 23.90.014, 23.90.018, 23.90.019; 23.90.020, 23.91.006, 23.91.012, adding new Sections 23.90.015 and 23.90.025, and repealing Section 23.90.022 of the Seattle Municipal Code.

Summary of the Legislation: This legislation authorizes administrative changes to the Land Use Code to improve efficiencies, and increases the maximum fine that can be assessed for Code violations from \$75 per day to up to \$500 per day. It is one of three companion Bills intended to strengthen and align the Department of Planning and Development's (DPD's) Housing and Building Maintenance, Land Use, and Weeds and Vegetation Codes.

Background: The Land Use Code requires Department of Planning and Development (DPD) to record every Notice of Violation (NOV) it issues with the King County Recorder's Office at a cost of \$32 for the first page and \$1 for each subsequent page. The existing Code also requires that DPD notify responsible parties by certified mail at a cost of \$4.25 plus postage. In 2006, DPD responded to 1,563 Land Use service requests, which resulted in 1132 cases and 246 Land Use NOV's (almost a 50 % increase from the prior year). Greater efficiency will be achieved by removing the requirement to record every NOV with the County and notify violators by certified mail.

In addition to the administrative changes noted above, the legislation increases the maximum fine that DPD can levy from \$75 per day to up to \$500 per day.

X This legislation has nominal financial implications.

Actual cost savings resulting from the administrative changes and increased maximum fine authorized by this legislation are projected to be nominal based on the small number of projected higher fines. Penalties will be deposited into the General Subfund, with 10 percent allocated to Parks, per City of Seattle Charter, Article VIII, Section 15, and Article XI, Section 3.

Attachment A: Director's Report and Recommendation

DIRECTOR'S REPORT AND RECOMMENDATION

Enforcement Ordinances

Introduction

The Department of Planning and Development (DPD) is proposing amendments to three of its enforcement codes:

1. Housing and Building Maintenance Code (HBMC);
2. Land Use Code;
3. Weeds and Vegetation Code.

These three bills are part of a coordinated effort to strengthen and improve DPD's housing, land use, and weeds enforcement and align them with other Seattle codes. Housing, land use, and weeds enforcement is a vital service that helps protect the health and safety of Seattle's people. The demand for this service is increasing as reflected in DPD's ever-growing caseloads. These reforms will bring efficiency to the process of gaining compliance with the City's regulations. In addition, these bills give DPD the option to obtain higher penalties, which are intended to be a more effective deterrent in DPD's more challenging cases.

Background

DPD's Code Compliance Division enforces a number of different Seattle codes: housing and building maintenance, land use (including shoreline and landmarks), weeds and vegetation, environmentally critical areas, tree protection, building, stormwater, grading and drainage control, and side sewer. Of the approximately 10,000 calls DPD receives annually, about 2,700 are complaints (service requests) about rental housing conditions, vacant buildings, land use violations, and vegetation overgrowth. When DPD verifies that a violation exists, it creates a case to track its actions and the outcome, and to notify the responsible party of the issue and needed resolution. DPD often allows an opportunity for informal compliance through the use of warnings, however, if DPD does not obtain prompt voluntary compliance, a Notice of Violation (NOV) or a citation is issued, depending on the specific violation. If the violation remains uncorrected, DPD ultimately initiates legal action to compel compliance. For 2005 and 2006 DPD observed:



2005 Enforcement Statistics				
Type	Service Requests	Cases	NOVs/Citations	Law Referrals
HBMC	605	498	166/4	30
Land Use	1359	1004	169/127	22
Weeds	936	592	63	1

2006 Enforcement Statistics				
Type	Service Requests	Cases	NOVs/Citations	Law Referrals
HBMC	791	615	212/4	36
Land Use	1563	1132	246/109	63
Weeds	922	693	36	3

The increase in HBMC and Land Use service requests (up 30% and 10% respectively) and NOVs (up 30% and 50% respectively) was quite significant for 2006.

Currently, several specific procedural code requirements create barriers to effective enforcement action. For example, DPD is required to record every Notice of Violation (NOV) with the King County Recorder's Office (current cost is \$32 for the first page and \$1 for each subsequent page) and mail all NOVs by certified mail to each responsible party (current cost is \$4.25 an NOV, in addition to regular postage). The current process does not allow DPD to include additional violations in lawsuits against a single property owner when more violations are discovered at a later time. In addition, before pursuing criminal sanctions, DPD must first obtain a civil judgment against the property owner.

These enforcement models were discontinued years ago in DPD's building code and similarly are no longer used by the Seattle Fire Department or Seattle Department of Transportation. Instead, those codes rely on the use of first-class mail, do not require that all notices be recorded, and provide for a strict liability alternative criminal provision. DPD seeks to strengthen and improve its Housing and Building Maintenance, Land Use, and Weeds and Vegetation codes by aligning them with other Seattle codes and increasing the penalties to provide more alternatives and greater deterrence in DPD's most challenging enforcement cases.

Analysis and Recommendations

Housing and Building Maintenance Code

The Housing and Building Maintenance Code sets minimum standards for Seattle's rental housing and vacant buildings. Historically, the Housing and Building Maintenance Code was enforced entirely by an NOV process, but in 1999, the City removed two violation categories (Minimum Fire and Safety Standards (SMC

22.206.130) and Minimum Security Standards (SMC 22.206.140)) out of the NOV process and created a citation procedure for those two distinct categories of violations. During these past several years DPD has observed that the two different processes have resulted in much confusion and a somewhat less effective enforcement process. Invariably, whenever DPD observes a violation of the Minimum Fire and Safety Standards or Minimum Security Standards, DPD also observes violations of other provisions of the Housing and Building Maintenance Code. Thus, both an NOV and a citation are often required for a single housing unit or structure.

In 2006, DPD responded to 791 HBMC service requests, which resulted in 615 cases and 212 NOVs (up almost 30% from the prior year). The administrative work is doubled and private property owners become confused when they receive two different notices with two different response requirements and enforcement processes. These administrative and financial resources are better spent on other activities that support DPD's Code Compliance Program. As for penalties, the \$15 a day cumulative civil penalty was enacted in 1987, an increase from the previous \$3 enacted in 1978. With average monthly rents now exceeding \$1,000 a month, the \$15 a day penalty offers little incentive to comply. Therefore, it is appropriate to amend the penalty provision of the Housing and Building Maintenance Code, which has not been changed in 20 years.

The proposed bill re-establishes the NOV process for all Housing and Building Maintenance Code violations. It maintains individual notice of the NOV by using first-class mail instead of a certified mail requirement and makes optional whether DPD records the NOVs with the King County Recorder's Office. It also increases the options available to DPD and provides for more effective deterrence in its more challenging cases by increasing the cumulative civil penalty for violations of the Housing and Building Maintenance Code from \$15 per unit a day to "up to \$500" per unit a day (\$1000 per day for emergency order violations), and it allows the City to prosecute a violator criminally without first having to obtain a civil judgment against them. This would bring the HBMC in alignment with other Seattle enforcement processes.

Land Use Code

The Land Use Code regulates the use of property and sets minimum development standards for Seattle property. In 2006, DPD responded to 1563 Land Use service requests, which resulted in 1132 cases and 246 Land Use NOVs (almost a 50 % increase from the prior year). This proposed bill streamlines and simplifies the processing of NOVs by allowing the use of first-class mail for service of the NOV, making the recording of NOVs with King County optional, and allowing DPD to consolidate multiple violations against a single property owner into a single action as additional violations are discovered. It also increases the options available to DPD and provides for more effective deterrence in its more challenging cases by increasing the cumulative civil penalty from \$75 per day to "up to \$500" per day, and creating a strict liability alternative criminal provision.



Weeds and Vegetation Code

The Weeds and Vegetation Code prevents private vegetation from encroaching on the public right-of-way. Historically, the Weeds and Vegetation Code was enforced by the King County Public Health Department, but several years ago responsibility for the enforcement of this code was transferred to DPD. The Seattle Department of Transportation regulates vegetation originating in the public right-of-way. Today, DPD responds to about 1,000 service requests a year, which results in about 700 cases, 40 NOVs, and 1-3 Law Department referrals. This proposed bill proposes a change in use of existing processes by implementing a citation process for these violations with a penalty of \$150 for the first violation, \$500 for a second violation, and a summary abatement procedure for continued noncompliance encroaching in the public-right-of-way.

Recommendations

The Director recommends approving the proposed Housing and Building Maintenance, Land Use, and Weeds and Vegetation Code amendments. This is a vital service that helps protect the health and safety of Seattle's residents, and the demand for this service is increasing. These reforms will bring efficiency to the process of gaining compliance with the City's regulations. In addition, this bill gives DPD the option to obtain higher penalties that are intended to be a more effective deterrent in DPD's more challenging cases. Adopting these proposals will help DPD to more strategically allocate its enforcement resources to the benefit of all Seattle people.



STATE OF WASHINGTON – KING COUNTY

--SS.

212258
CITY OF SEATTLE, CLERKS OFFICE

No.

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a


CT:122407 ORDINANCE

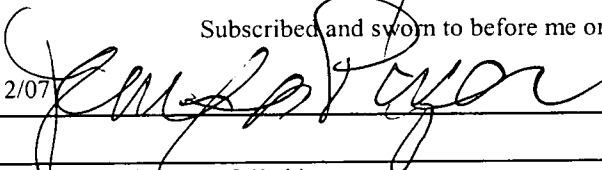
was published on

06/12/07

The amount of the fee charged for the foregoing publication is the sum of \$ 627.75, which amount has been paid in full.





Subscribed and sworn to before me on
06/12/07 

Notary public for the State of Washington,
residing in Seattle

State of Washington, King County

City of Seattle

ORDINANCE 122407

AN ORDINANCE relating to land use code enforcement, amending Sections 23.90.006, 23.90.008, 23.90.014, 23.90.018, 23.90.019, 23.90.020, 23.91.006, and 23.91.012, adding new Sections 23.90.015 and 23.90.025, and repealing Section 23.90.022 of the Seattle Municipal Code.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 23.90.006 of the Seattle Municipal Code, which section was last amended by Ordinance 121196, is amended as follows:

23.90.006 Investigation and notice of violation.

A. The Director ~~((shall))~~ is authorized to investigate any structure or use ~~((which))~~ the Director reasonably believes does not comply with the standards and requirements of this Land Use Code.

B. If after investigation the Director determines that the standards or requirements have been violated, the Director ~~((shall serve))~~ may issue a notice of violation to ~~((upon))~~ the owner, tenant or other person responsible for the condition. The notice of violation shall state separately each standard or requirement violated, shall state what corrective action, if any, is necessary to comply with the standards or requirements~~((;))~~, and shall set a reasonable time for compliance. ~~((The notice shall state that any subsequent violation may result in criminal prosecution as provided in Section 23.90.020.))~~ In the event of violations of the standards or requirements of the Seattle Shoreline Master Program, Chapter 23.60, the required corrective action shall include, if appropriate, but shall not be limited to, mitigating measures such as restoration of the area. ~~((Civil penalties for unauthorized dwelling units in single-family structures shall be applied.))~~

C. The notice shall be served upon the owner, tenant or other person responsible for the condition by personal service ~~((, registered mail, or certified mail))~~ or by first class mail ~~((with return receipt requested; addressed to the last known address of such person))~~ to the person's last known address. ~~((If, after a reasonable search and reasonable efforts are made to obtain service, the whereabouts of the person or persons is unknown or service cannot be accomplished and the Director makes an affidavit to that effect, then service of the notice upon such person or persons may be made by:))~~ If the address of the responsible person is unknown and cannot be found after a reasonable search, the notice may be served by posting a copy of the notice at a conspicuous place on the property. If a notice of violation is directed to a tenant or other person responsible for the violation who is not the owner, a copy of the notice shall be sent to the owner of the property.

~~((1. Publishing the notice once each week for two (2) consecutive weeks in the City Official Newspaper; and~~

~~2. Mailing a copy of the notice to each person named on the notice of violation by first class mail to the last known address if known, or if unknown, to the address of the property involved in the proceedings.))~~

D. A copy of the notice of violation may be filed with the King County Department of Records and Elections when the responsible party fails to correct the violation or the Director requests the City Attorney take appropriate enforcement action ~~((may be posted at a conspicuous place on the property, unless posting the notice is not physically possible)).~~

E. Nothing in this section shall be deemed to limit or preclude any action or proceeding to enforce this chapter nor does anything in this section obligate the Director to issue a notice of violation prior to initiation of a civil or criminal enforcement action except as otherwise provided in Director's rules adopted pursuant to SMC chapter 23.95. (Nothing in this section shall be deemed to limit or preclude any action or proceeding pursuant to Section 23.90.010 or Section 23.90.012.

F. The Director may mail, or cause to be delivered to all residential, nonresidential, and/or live-work rental units in the structure or post at a conspicuous place on the property, a notice that informs each recipient or resident about the notice of violation, Stop Work order or emergency Order and the applicable requirements and procedures.

G. A notice or an Order may be amended at any time in order to:

1. Correct clerical errors; or
2. Cite additional authority for a stated violation(s).

Section 2, Section 23.90.008 of the Seattle Municipal Code, which section was last amended by Ordinance 117263, is amended to read as follows:

23.90.008 Time to comply.

((A-)) When calculating a reasonable time for compliance as required by Section 23.90.006, the Director shall consider the following criteria:

1. The type and degree of violation cited in the notice;
2. The stated intent, if any, of a responsible party to take steps to comply;
3. The procedural requirements for obtaining a permit to carry out corrective action;
4. The complexity of the corrective action, including seasonal considerations, construction requirements and the legal prerogatives of landlords and tenants; and
5. Any other circumstances beyond the control of the responsible party.

((B- Unless a request for review before the Director is made in accordance with Section 23.90.014, the notice of violation shall become the final order of the Director. After the notice of violation becomes the final order of the Director, a copy of the notice of violation shall be filed with the King County Department of Records and Elections if the notice of violation cites illegal uses, illegal units, failure to comply with a permit condition, elimination of a required parking space, more than one (4) dwelling per lot, or shoreline violations. All other notices of violation shall be filed with the King County Department of Records and Elections when the Director notifies the City Attorney in writing of any person subject to a penalty under the title.))

Section 3, Section 23.90.014 of the Seattle Municipal Code, which section was last amended by Ordinance 119702, is amended as follows:

23.90.014 Review by the Director.

A. Any person significantly affected by or interested in a notice of violation issued by the Director pursuant to Section 23.90.006 may obtain a review of the notice by requesting such review within ten (10) (fifteen (15)) days after service of the notice. When the last day of the period so computed is a Saturday, Sunday or federal or City holiday, the period shall run until five (5:00) p.m. on the next business day. The request shall be in writing, and upon receipt of the request, the Director shall notify any persons served the notice of violation and the complainant, if any, of the request for review and the deadline for submitting additional information for the review. ((which shall be within)) Additional information shall be submitted to the Director no later than fifteen (15) (twenty (20)) days after the notice of a request for a review is mailed (received), unless otherwise agreed by all persons served with the notice of violation. Before the deadline for submission of additional information, any person significantly affected by or interested in the notice of violation (including any persons served the notice of violation and the complainant) may submit any additional information in the form of written material or oral comments to the Director for consideration as part of the review.

B. The review will be made by a representative of the Director who is familiar with the case and the applicable ordinances. The Director's representative will review all additional information received by the deadline for submission of additional information. The reviewer may also request clarification of information received and a site visit. After review of the additional information, the Director may:

1. Sustain the notice of violation;
2. Withdraw the notice of violation;
3. Continue the review to a date certain for receipt of additional information; or
4. Modify the notice of violation, which may include an extension of the compliance date.

((C- The Director shall issue an Order of the Director containing the decision within seven (7) days of the date of the completion of the review and shall cause the same to be mailed by regular first class mail to the person or persons named on the notice of violation, mailed to the complainant, if possible, and filed with the Department of Records and Elections of King County)).

Section 4. A new section 23.90.015 is added to the Seattle Municipal Code as follows:

23.90.015 Order of the Director.

A. Where review by the Director has been conducted pursuant to Section 23.90.014, the Director shall issue an order of the Director containing the decision within fifteen (15) days of the date that the review is completed and shall cause the same to be mailed by regular first class mail to the person or persons named on the notice of violation and, if possible, mailed to the complainant.

B. Unless a request for review before the Director is made pursuant to Section 23.90.014, the notice of violation shall become the order of the Director.

C. Because civil actions to enforce Title 23 SMC are brought in Seattle Municipal Court pursuant to Section 23.90.018, orders of the Director issued under this chapter are not subject to judicial review pursuant to chapter 36.70C RCW.

Section 5, Section 23.90.018 of the Seattle Municipal Code, which section was last amended by Ordinance 122190, is amended as follows:

23.90.018 Civil ((penalty)) enforcement proceedings and penalties.

A. In addition to any other ((sanction or remedial procedure that may be available)) remedy authorized by law or equity, any person violating or failing to comply with any of the provisions of Title 23 ((and who is identified in an order of the Director)) shall be subject to a cumulative penalty ((in the amount of)) of ((Seventy-five (\$75)) up to One Hundred Fifty Dollars (\$150.00)) per day for each violation from the date the violation begins for the first ten (10) days of noncompliance; and up to Five Hundred Dollars (\$500) per day for each violation ((from the date set for compliance)) for each day beyond ten (10) days of noncompliance until compliance is achieved ((the person complies with the requirements of the code)), except as provided in subsection B of this section. In cases where the Director has issued a notice of violation, the violation will be deemed to begin for purposes of determining the number of days of violation on the date compliance is required by the notice of violation.

B. Specific Violations.

1. Violations of Section 23.71.018 are subject to the penalty in the amount specified in Section 23.71.018 H.

2. Violations of ((the requirements of)) Section 23.44.041 C are subject to a civil penalty of Five Thousand Dollars (\$5,000), which shall be in addition to any penalty imposed under subsection A of this section.

3. Violation of Section 23.49.011 or 23.49.015 with respect to failure to demonstrate compliance with commitments to earn LEED Silver ratings under either such Section are subject to penalty in amounts determined under Section 23.49.020, and not to any other penalty.

C. Civil actions to enforce Title 23 shall be brought exclusively in Seattle Municipal Court except as otherwise required by law or court rule. ((The penalty imposed by this section shall be collected by civil action brought in the name of the City)). The Director shall ((notify)) request in writing that the City Attorney take enforcement action. ((in writing of the name of any person subject to the penalty, and the)) The City Attorney shall, with the assistance of the Director, take appropriate action to ((collect the penalty)) enforce Title 23. In any civil action ((for a penalty)) filed pursuant to this chapter, the City has the burden of proving by a preponderance of the evidence that a violation exists or existed, ((the)) The issuance of the notice of violation or of an order following a review by the Director is not itself evidence that a violation exists.

D. Except in cases of violations of Section 23.49.011 or 23.49.015 with respect to failure to demonstrate compliance with commitments to earn LEED Silver ratings, the violator may show as full or partial mitigation of liability:

1. That the violation giving rise to the action was caused by the ((willful)) willful act, or neglect, or abuse of another; or
2. That correction of the violation was commenced promptly ((upon receipt of the notice thereof)), but that full compliance within the time specified was prevented by inability to obtain necessary materials or labor, inability to gain access to the subject structure, or other condition or circumstance beyond the control of the defendant.

Section 6, Subsection B of Section 23.90.019 of the Seattle Municipal Code, which section was last amended by Ordinance 122190, is amended as follows:

23.90.019 Civil penalty for unauthorized dwelling units in single-family structures.

B. After discovery of the existence of one (1) or more unauthorized dwelling unit(s) in a single-family dwelling unit or the existence of an unauthorized detached dwelling unit, the Director ((shall)) may issue a ((Notice of Violation)) notice of violation in the manner set forth in Section 23.90.006, which notice shall impose the civil penalty and notify the owner of the date by which

action to remove or legally establish the unauthorized unit(s) must be completed to avoid additional penalty. Failure to complete the required action by the date stated shall be a further violation of ((the Land Use Code)) Title 23, subjecting the owner to an additional penalty of ((Seventy-five Dollars (\$75)) up to Five Hundred Dollars (\$500)) per day for each violation from the date the violation begins until ((the Notice)) compliance is ((satisfied)) achieved. In cases where the Director has issued a notice of violation, the violation will be deemed to begin for purposes of determining the number of days of violation on the date compliance is required by the notice of violation. Such penalties shall be collected in the manner provided in Section 23.90.018.

Section 7, Subsection A of Section 23.90.020 of the Seattle Municipal Code, which section was last amended by Ordinance 122054, is amended as follows:

23.90.020. Alternative ((Criminal penalties)) criminal penalty.

A. Any person ((violating)) who violates or ((failing)) fails to comply with any of the provisions of this Title 23 and who has had an Order of Judgment entered against them by a court of competent jurisdiction for violating Titles 22 or 23 within the past seven (7) years from the date the criminal charge is filed ((Land Use Code and who has had a judgment entered against him or her pursuant to Section 23.90.018 or its predecessors within the past five (5) years shall be subject to criminal prosecution and upon conviction of a subsequent violation shall be fined in a sum not exceeding Five Thousand Dollars (\$5,000) or be imprisoned in the City Jail for a term not exceeding one (1) year or be both fined and imprisoned)) shall upon conviction be guilty of a gross misdemeanor subject to the provisions of Chapter 12A.02 and 12A.04, except that absolute liability shall be imposed for such a violation or failure to comply and none of the mental states described in Section 12A.04.030 need be proved. The Director may request that the City Attorney prosecute such violations criminally as an alternative to the civil procedure outlined in this chapter. Each day of noncompliance with any of the provisions of this Land Use Code shall constitute a separate offense.

Section 8. A new section 23.90.025 is added to the Seattle Municipal Code as follows:

23.90.025 Appeal to Superior Court.

Final decisions of the Seattle Municipal Court on enforcement actions authorized by this chapter may be appealed pursuant to the Rules for Appeal of Decisions of Courts of Limited Jurisdiction.

Section 9, Subsection B of Section 23.91.006 of the Seattle Municipal Code, which was last amended by Ordinance 119890, is hereby amended as follows:

SMC 23.91.006 Response to citations.

B. A response to a citation must be received by the Office of the Hearing Examiner no later than ((eighteen (18)) fifteen (15)) days after the date the citation is served. When the last day of the appeal period so computed is a Saturday, Sunday, or federal or City holiday, the period shall run until five (5:00) p.m. on the next business day.

Section 10, Subsection E of Section 23.91.012 of the Seattle Municipal Code, which section was last amended by Ordinance 121477, is hereby amended as follows:

SMC 23.91.012 Contested hearing.

E. Evidence at Hearing.

1. The certified statement or declaration authorized by RCW 9A.72.085 submitted by an inspector shall be prima facie evidence that a violation occurred and that the person cited is responsible. The certified statement or declaration of the inspector authorized under RCW 9A.72.085 and any other evidence accompanying the report shall be admissible without further evidentiary foundation.

2. Any certifications or declarations authorized under RCW 9A.72.085 shall also be admissible without further evidentiary foundation. The person cited may rebut the DPD evidence and establish that the cited violation(s) did not occur or that the person contesting the citation is not responsible for the violation.

Section 11, Section 23.90.022 of the Seattle Municipal Code, which was last amended by Ordinance 120166, is repealed in its entirety.

Section 12, Severability and Savings. If any section, sentence, clause or phrase of this ordinance shall be held to be invalid or unconstitutional by an administrative agency or quasi-judicial body, or by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance. Provided, however, that if any section, sentence, clause or phrase of this ordinance is held to be invalid by an administrative agency or quasi-judicial body, or by a court of competent jurisdiction, then the section, sentence, clause or phrase in effect prior to the effective date of this ordinance shall be in full force and effect for that individual section, sentence, clause or phrase as if this ordinance had never been adopted.

Section 13. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 29th day of May, 2007, and signed by me in open session in authentication of its passage this 29th day of May, 2007.

Nick Licata

President of the City Council

Approved by me this 5th day of June, 2007.

Gregory J. Nickels, Mayor

Filed by me this 6th day of June, 2007.

(Seal) Judith Pippin

City Clerk

Publication ordered by JUDITH PIPPIN, City Clerk

Date of publication in the Seattle Daily Journal of Commerce, June 12, 2007.

6/12(212258)



City of Seattle

Gregory J. Nickels, Mayor

Office of the Mayor

May 15, 2007

Honorable Nick Licata
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Licata:

I am transmitting the attached proposed Council Bill that will increase the City's ability to crack down on landowners in Seattle who illegally use their properties, causing a blight in our neighborhoods. The proposed legislation authorizes administrative changes to the Land Use Code to improve efficiencies and increase the civil penalty for Code violations from \$75 per day to an upward limit of \$500 per day. This attached legislation is one of three companion Bills intended to strengthen and improve the Department of Planning and Development's (DPD's) Housing and Building Maintenance, Land Use, and Weeds and Vegetation Codes.

Enforcement of the Land Use Code is a vital service that helps protect the health and safety of Seattle's residents. These important reforms will bring efficiency to the process of gaining compliance with the City's regulations. In addition, this Bill would also give DPD the option to obtain higher monetary penalties – an effective deterrent in DPD's more challenging cases.

Passage of this legislation will

- Expedite Notices of Violation (NOVs) by using first class rather than certified mail;
- Streamline the public notice process by relying on technology and making the recording of NOVs with the King County Recorder's Office optional; and
- Add options for fines for violations of the Land Use Code by increasing the cumulative civil penalty from \$75 a day to an upward limit of \$500 a day and creating an alternative criminal provision.

Passage of this legislation will improve the quality of life in many of our neighborhoods by increasing compliance with the City's Land Use Code. Thank you for your consideration of this legislation. Should you have questions, please contact DPD Code Compliance Manager Darby N. DuComb at 684-3781.

Sincerely,

GREG NICKELS
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

600 Fourth Avenue, 7th Floor, P.O. Box 94749, Seattle, WA 98124-4749

Tel: (206) 684-4000, TDD: (206) 684-8811 Fax: (206) 684-5360, Email: mayors.office@seattle.gov

An equal employment opportunity, affirmative action employer. Accommodations for people with disabilities provided upon request.

